



OFFICE OF THE POLICE COMMISSIONER  
ONE POLICE PLAZA • ROOM 1400

November 11, 2014

Memorandum for: Deputy Commissioner, Trials

GHAN

Re: **Police Officer Raymond Pepitone**  
Tax Registry No. 903295  
Patrol Borough Staten Island Task Force  
Disciplinary Case No. 2013-9877

The above named member of the service appeared before Assistant Deputy Commissioner Claudia Daniels-DePeyster on March 24, 2014, and was charged with the following:

**DISCIPLINARY CASE NO. 2013-9877**

1. Said Police Officer Raymond Pepitone, assigned to the Staten Island Task Force, while on sick leave on or about April 30, 2013 and May 8, 2013, did wrongfully provide misleading statements to the Department District Surgeon when he stated he could not lift his arm over his shoulders when that was not in fact true. *(As amended)*  
**P.G. 203-10, Page 1, Paragraph 5** **GENERAL REGULATIONS**

2. Said Police Officer Raymond Pepitone, assigned to the Staten Island Task Force, while on sick leave on or about April 30, 2013 and May 8, 2013, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: said Police Officer exaggerated the degree of his injuries in that he claimed he was unable to lift his arm over his shoulders but was observed on two (2) occasions lifting his arm. *(As amended)*  
**P.G. 203-10, Page 1, Paragraph 5** **GENERAL REGULATIONS**  
**REPORTING SICK**

3. Said Police Officer Raymond Pepitone, assigned to the Staten Island Task Force, on or about and between November 8, 2008 and May 6, 2013, engaged in conduct prejudicial to the good order and efficiency of the Department, to wit: said officer did fail and neglect to register a 2001 Dodge Van.  
**P.G. 203-10, Page 1, Paragraph 5** **GENERAL REGULATIONS**

In a Memorandum dated August 25, 2014, Assistant Deputy Commissioner Claudia Daniels-DePeyster found the Respondent Guilty after he pleaded Guilty to Specification Nos. 1, 2 and 3 in Disciplinary Case No. 2013-9877. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

I have considered the totality of the circumstances and the issues in this matter, and deem that the Respondent's combined misconduct warrants a higher penalty and a period of performance monitoring. Therefore, the Respondent is to forfeit thirty (30) vacation days and be placed on one (1) year dismissal probation, as a disciplinary penalty.

  
William J. Bratton  
Police Commissioner





POLICE DEPARTMENT

August 25, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Raymond Pepitone  
Tax Registry No. 903295  
Patrol Borough Staten Island Task Force  
Disciplinary Case No. 2013-9877

The above-named member of the Department appeared before me on March 24, 2014, charged with the following:

1. Said Police Officer Raymond Pepitone, assigned to the Staten Island Task Force, while on sick leave on or about April 30, 2013 and May 8, 2013, did wrongfully provide misleading statements to the Department District Surgeon when he stated he could not lift his arm over his shoulders when that was not in fact true. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

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P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS  
REPORTING SICK

3. Said Police Officer Raymond Pepitone, assigned to the Staten Island Task Force, on or about and between November 8, 2008 and May 6, 2013, engaged in conduct prejudicial to the good order and efficiency of the Department, to wit: said officer did fail and neglect to register a 2001 Dodge Van.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

The Department was represented by Penny Bluford-Garrett, Esq., Department Advocate's Office, and Respondent was represented by John Tynan, Esq., Worth, Longworth & London, LLP.

Respondent, through his counsel, entered a plea of Guilty to the subject charges. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

### DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

### SUMMARY OF EVIDENCE IN MITIGATION

Respondent has been a member of the Department for over 20 years. He has worked in the 60 Precinct, the 120 Precinct, and his most recent assignment, the Staten Island Task Force (SITF). He testified at some point prior to April 2013, he injured both his shoulders in separate on-duty incidents while assigned to SITF.

Respondent's home was "totally destroyed" by Hurricane Sandy in October 2012. He and his family were forced to relocate to a basement apartment. Because of water damage, the first floor of the home needed to be gutted and rebuilt. Respondent did not receive compensation for the damage and was doing the work himself with the help of his brother and community groups.

On April 30, 2013, Respondent went to the Department district surgeon because the day before he was involved in a radio motor patrol (RMP) vehicle accident. At that appointment he told the surgeon that he was having pain in his shoulder. The surgeon

asked if he wanted to go sick, he replied, "No," and subsequently was placed on limited duty. Respondent explained that limited duty meant that he would still report to work, however, he would be inside the precinct answering the phones or performing non-patrol related functions. The surgeon, Dr. Mignola, asked him if he could lift his arm. Respondent told Mignola he had "difficulty with it."

Respondent stated that he drove his white Dodge van to the appointment. At the time the van's registration was expired. Respondent testified after learning of the expired registration, he corrected the issue the "very next day." After the appointment with Mignola he returned home and did some work on his house. Specifically, he "tried to put some compound on the walls" and "attempted to do some of the sheetrock."

Respondent had scheduled a second appointment with Mignola the following week. At some point before the second appointment, Respondent went to see an orthopedist. The orthopedist did not find any damage in his shoulder, but "manipulated" his arm in a way to make it feel much better. At his follow-up appointment on May 6, 2013, he told Mignola he felt great. However, he had a separate issue with his foot so he remained on limited duty for one more day. At some point, while on limited duty, Respondent rolled up and put away a plastic flat hose that had been lying on the sidewalk. Respondent stated a flat hose is like "filament paper." It is three inches wide and can be folded flat.

When asked how soon after May 6, 2013 did he feel his shoulder was back fully and capable of doing full-duty work he responded, "The next day."

Respondent has never been told by his supervisors his work has not met Department standards. He has received distinctions for being "cop of the month" twice

in his career. Further, he approximated in his time with the Department he has made hundreds of arrests and has assisted in hundreds more.

While on limited duty and between the dates April 30, 2013 and May 8, 2013, Respondent testified that he had not done any other physical activity other than the work he did on his home.

During cross examination, Respondent stated on April 30, 2013, approximately three hours after his appointment with Mignola he began working on his home. He testified that he could not lift anything really heavy so he was applying spackling compound to the walls. The Assistant Department Advocate then showed two photographs to Respondent. He stated that they were pictures of him in his home "holding a square" (see Department's Exhibit [DX] 1 and 2, photographs of Respondent from April 30, 2013, in his home holding a spackling item).

At his May 6, 2013 Medical Division appointment, Respondent told Mignola he was suffering some degree of pain in his shoulder. At trial, Respondent was shown videos and Respondent identified himself in them. (See DX 3, a compact disc containing video footage from May 8, 2013, of Respondent rolling and lifting the hose).

Respondent agreed that he was in possession of an unregistered white Dodge van with Pennsylvania license plates between November 2008 and May 6, 2013. He testified that he lost all of his paperwork from the flood and forgot to register the vehicle. He stated he only registered the vehicle after the "sergeant brought it to my attention that it was expired."

On redirect examination, Respondent testified that after watching the video, he remembered being in a "considerable amount of pain" from rolling up the hose (DX 3).

Upon questioning by the Court, he testified the hose weighed about five pounds. His shoulder hurt when he rolled the hose on the ground and when he lifted it.

### PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on August 27, 1993. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has pleaded Guilty to making misleading statements to the Department District Surgeon when he stated that he could not lift his arm over his shoulders when that was not in fact true; engaging in prejudicial conduct when he exaggerated the degree of his injuries regarding lifting his arm, but was observed on two occasions lifting his arm; and failing to register a 2001 Dodge van.

The Assistant Department Advocate asked for a penalty of the forfeiture of 30 vacation days and one year dismissal probation. The Court disagrees. The Court finds mitigating factors here. Respondent testified that he went to the medical division and advised his district surgeon that he was in pain when he lifted his arm. Respondent took full responsibility when his counsel stated that maybe Respondent misunderstood what he was asked by the surgeon. Respondent did not testify before this Court that he could not lift his arms over his shoulders. He also stated during his testimony that he was asked by the district surgeon whether he wanted to go sick and he declined that option. If he could not raise his arms over his shoulder, it is likely that Respondent would have availed

himself of going out from work sick. Instead, he chose to go limited duty so that he could perform administrative duties rather than be completely out of work.

Another mitigating factor was the fact that Respondent was on limited duty, not for an exorbitant amount of time, but for about one week. He explained that once the pain in his arms/shoulder area subsided, he had a pain in his foot which extended his limited duty only by one more day. He further explained that during the time on limited duty, he went to the doctor, had his arm stretched which relieved some of the pressure he was experiencing in his shoulders. This allowed him to have more freedom of movement and that was the time that he was seen rolling up a flat hose at his residence. He stated that the hose was like a "filament paper," was three inches wide and folded flat. He said it weighed maybe five pounds.

The Court reviewed the video clips (DX 3) and found that Respondent's explanation during the mitigation hearing was not inconsistent with the video. The fact that Respondent was able to roll a flat hose does not mean that he was not in any pain doing the work. It must be noted that at no time did Respondent exaggerate his injury to the point that he was placed on sick leave and not reporting for duty at all. Respondent pleaded Guilty to the fact that he told the Department district surgeon that he could not lift his arm over his shoulder; but he testified at trial that he could do so, and he meant to say that he was in pain doing so. Respondent acknowledged that the photographs in evidence (DX 1 and DX 2) show him in his house using a spackle apparatus where he was putting the spackle on the sheet rock walls in his house. Respondent also acknowledged that he was observed in the videos winding a flat hose and rolling it up to



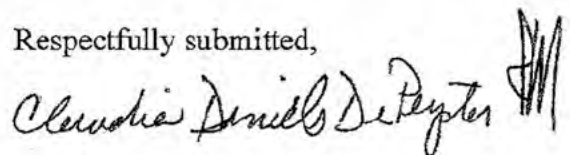
put it away. He also admitted that at times he was seen in the video clips (DX 3) raising the hose above his head.

However, simply reviewing the video does not mean that Respondent felt well enough to return to patrol during that week. To return to patrol meant that Respondent was up to performing his duties 100%, and he testified that that was not the case and why he asked the district surgeon to place him on limited duty until he felt better, which took approximately one week.

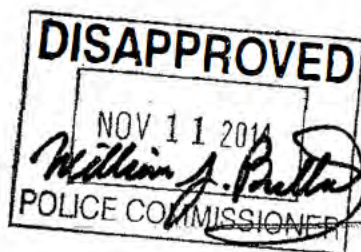
With respect to the allegation that Respondent failed to register his 2001 Dodge van, he explained that his home was totally destroyed by Hurricane Sandy in October 2012. He lost all of his paperwork and did not realize that his registration had expired on his van. Once he learned that the registration had expired on his van, he immediately took care of the problem the next day.

Based on the fact that the Court finds mitigating circumstances here, it is recommended that Respondent forfeit 15 vacation days.

Respectfully submitted,



Claudia Daniels-DePeyster  
Assistant Deputy Commissioner – Trials



POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER RAYMOND PEPITONE  
TAX REGISTRY NO. 903295  
DISCIPLINARY CASE NO. 2013-9877

In 2011, 2012 and 2013, Respondent received an overall rating of 3.0 "Competent" on his annual performance evaluations. Respondent has received 12 Excellent Police Duty medals and three Meritorious Police Duty medals in his career to date.

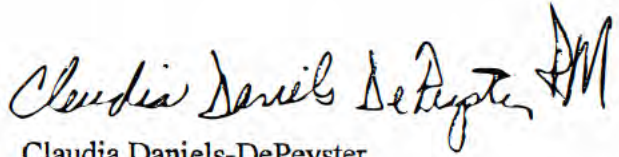
[REDACTED]

[REDACTED]

[REDACTED]

On February 3, 2000, Respondent received Charges and Specifications for engaging in Harassment while off duty. He pleaded Guilty in the matter and forfeited ten vacation days as a penalty.

For your consideration.

  
Claudia Daniels-DePeyster  
Assistant Deputy Commissioner -- Trials